

**Assembly Bill No. 1651**

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Passed the Assembly    August 30, 1996

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*Chief Clerk of the Assembly*

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Passed the Senate    August 20, 1996

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1996, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Sections 25187.2 and 25360 of, to add Sections 25330.4 and 25360.1 to, to add Chapter 6.66 (commencing with Section 25269) to Division 20 of, and to repeal Section 25206 of, the Health and Safety Code, relating to hazardous substances, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1651, Richter. Hazardous substances: oversight: cost recovery.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, authorizes the Department of Toxic Substances Control to expend the money in the Hazardous Waste Control Account in the General Fund, upon appropriation by the Legislature, to pay for, among other things, removal and remedial actions related to the release of hazardous substances. Existing law authorizes the Attorney General to recover from the liable person, as defined, the costs incurred and payable from the account or the Hazardous Substance Cleanup Fund for a removal or remedial action to a hazardous substance release. Under existing law, the amount of any costs which may be recovered under those provisions for a remedial or removal action paid from the Hazardous Substance Cleanup Fund is required to include the amount paid from that fund and interest on that amount calculated at a rate equal to the interest rate of the bonds sold pursuant to the Hazardous Substance Cleanup Bond Act of 1984. Existing law also imposes liability upon those liable persons for administrative costs in an amount equal to 10% of the reasonable cost actually incurred, or \$500, whichever is greater. Existing law requires the State Board of Equalization to assess a fee of \$8,000 upon a potentially responsible party for oversight of a preliminary endangerment assessment by the department.



This bill would make a statement of legislative intent, would define terms, and would require the department to develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute the statement to all responsible parties. The bill would require the department to comply with the bill's oversight cost recovery requirements when recovering costs for corrective action pursuant to the hazardous waste control laws, for removal and remedial actions pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act, and for response actions pursuant to the California Expedited Remedial Action Reform Act of 1994. The bill would require the department to take specified actions to improve the tracking of indirect oversight costs, as defined, to establish rates for indirect oversight costs which are specific to each program and to review the department's cost recovery policies at least once every 2 years. The bill would also require the department to adopt specified procedures with regard to parties performing hazardous substance release site investigations and cleanups or taking a corrective action or response action, including a meet and confer process, to adopt a billing system, as prescribed, for oversight costs, and to take specified actions with regard to uncollectible accounts.

The department would be required to submit a report to the Legislature, by June 1, 1998, regarding the implementation of those requirements.

The bill would require the Controller to establish a separate subaccount in the Hazardous Waste Control Account for funds received for removal or remedial actions at a specific site and would continuously appropriate the funds in that subaccount to the department to carry out the removal or remedial action and for administrative costs, thereby making an appropriation.

The bill would instead provide that the amount of any remedial or removal action costs that may be recovered for a remedial or removal action paid from the Hazardous



Substance Cleanup Fund includes interest on any amount paid from the fund calculated at a rate equal to the interest rate of the bonds sold pursuant to the bond act and that the interest on any amount paid from the state account or the Site Remediation Account shall be calculated at the rate of return earned on investment in the Surplus Money Investment Fund. The bill would also subject any monetary obligation to the department pursuant to the hazardous waste control laws or the hazardous substance account act to interest from the date of the demand at the same rate of return earned on investment in the Surplus Money Investment Fund. The bill would delete the provision specifying the liability for administrative costs.

The bill would delete obsolete provisions and would make conforming changes.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25187.2 of the Health and Safety Code is amended to read:

25187.2. If a removal or remedial action order issued pursuant to Section 25187 to a potentially responsible party requires a person to take corrective action with respect to hazardous waste, that person shall pay for oversight of the removal or remedial action. This section does not prohibit the department or unified program agency from assessing any other penalty or recovering any costs for oversight of a removal or remedial action, pursuant to any other provision. Nothing in this section limits the due process requirements of Section 25187.

SEC. 2. Section 25206 of the Health and Safety Code is repealed.

SEC. 3. Chapter 6.66 (commencing with Section 25269) is added to Division 20 of the Health and Safety Code, to read:



## CHAPTER 6.66. OVERSIGHT COSTS

25269. The Legislature hereby finds and declares all of the following:

(a) To enhance cooperation between the department and the regulated community, and to reduce the state's costs associated with the oversight of cleanup efforts, the costs of the associated cost recovery program and the corresponding costs to the responsible parties involved, the oversight program should be administered in an efficient, responsible, and accountable manner.

(b) According to information provided to the Legislature, the department has collected more than seventy-one million dollars (\$71,000,000) since the cost recovery effort was begun in the early 1980s and there is approximately seventy million dollars (\$70,000,000) to eighty million dollars (\$80,000,000) in outstanding receivables for disputed site cleanup oversight costs. The information provided to the Legislature indicates that potentially responsible parties have complained that the department's oversight costs have been unpredictable, unsubstantiated, and exceedingly high.

(c) Disputes with potentially responsible parties over the reasonableness of oversight costs have been a major factor in the difficulty that the department has experienced in conducting cost recovery. Disputes of that kind substantially increase the cost of state operations and the cost of doing business for the private sector, leading to extended negotiations and litigation. The redirection of resources by both parties in attempting to resolve those differences most likely inhibit cleanup efforts and affect the ability of the parties to work together cooperatively, thereby exacerbating the costs associated with the cleanups. Disputes would be reduced by clarifying current law by providing definitions of direct and indirect oversight costs. Further, these high costs affect the competitiveness of California businesses in national and global business environments.

25269.1. For purposes of this article, the following terms have the following meaning:



(a) “Department” means the Department of Toxic Substances Control.

(b) “Direct oversight costs” means the costs to the department of overseeing a cleanup action, pursuant to the authority specified in subdivision (a) of Section 25269.2, that can be specifically attributed to a particular cost objective, including, but not limited to, sites, facilities, and activities.

(c) “Indirect oversight costs” means the costs to the department of activity that is of a common or joint purpose benefiting more than one cost objective and not readily assignable to a single case objective.

(d) “Pro rata” means the general administrative costs expended by central service agencies to provide centralized services to state agencies, as defined in the State Administrative Manual.

25269.2. (a) The department shall comply with this chapter when recovering oversight costs for corrective action pursuant to Chapter 6.5 (commencing with Section 25100), for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300), and for response actions pursuant to Chapter 6.85 (commencing with Section 25396).

(b) The department shall develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute the statement to all responsible parties.

25269.3. The department shall take the following actions with regard to the tracking of indirect oversight costs:

(a) Ensure that pro rata costs are allocated appropriately to all departmental activities, so that the department’s program will only bear these pro rata costs in proportion to the benefits received by potentially responsible parties.

(b) Routinely include operating expenses in the indirect oversight costs and allocate those expenses using processes that ensure that the department’s program



only bears indirect oversight costs in proportion to the benefits received by potentially responsible parties.

(c) Exclude, from indirect oversight costs, the costs of grant development and administration, fee administration, contract development and administration, and public and governmental inquiries.

25269.4. (a) The department shall establish rates for indirect oversight costs that are specific to each program and shall review and update the indirect cost rates based upon increases or decreases in the amounts of grants received by the department, department reorganizations, and other relevant factors, but not less than once every six months, based upon the previous 12 months of expenditure data. The department shall apply the indirect oversight cost rates prospectively and shall not make retroactive adjustments in those rates.

(b) The department shall review the department's cost recovery policies at least once every two years.

25269.5. The department shall take the following actions with regard to the department's relationship with the parties who are performing the investigation and cleanup of the hazardous substance release site or taking a hazardous waste corrective action or response action:

(a) Adopt procedures to improve communication, facilitate the exchange of ideas, eliminate surprises, and allow better financial planning by the department and potentially responsible parties, including a meet and confer process which includes, but is not limited to, all of the following:

(1) An estimate of the cost of site remediation by the department for the next phase of the site remediation activity, including a list of estimated personnel labor rates.

(2) An estimate of the total hours that the department expects the department staff to incur in the next phase of the site mitigation process, to the extent that the department can project its time and costs in advance. That estimate shall include the projected hours of the project manager, and the costs of public participation, legal counsel, and technical consultations.

(3) A discussion of the schedule for the remediation action, including a thorough review of the services that the department expects to provide, deliverables, timeframes, expectations of both parties, a process for status reporting by both parties, systematic billing at least once every three months by the department, and an agreement on how the work plan will be modified, and how the costs will be estimated.

(b) Develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and the availability of program guidance and policies, which shall be distributed to all potentially responsible parties before any site remediation commences, as part of the meet and confer process.

(c) Review all informal guidance documents for the cost recovery program, including fee bulletins, management memos, policies, and procedures, and review and update those documents, as appropriate.

(d) Establish a procedure, when there is a change of project manager for a remediation action, to provide for a detailed status briefing to identify the highlights of past work and identify the current areas of agreement and disagreement among the parties.

25269.6. The department shall adopt a billing system for oversight costs which meets all of the following criteria:

(a) Invoices shall be issued within 60 days to the extent practicable, with appropriate incentives for prompt payment. In no event shall invoices be issued less frequently than on a quarterly basis.

(b) Invoices shall be mailed to the correct person for the potentially responsible party.

(c) Sufficient detail shall be included with each invoice, so that the potentially responsible party can relate the items on the invoice to the benefits received, and additional details, including daily timesheet personnel data, shall be made readily available.





(d) Invoices shall be supplemented with statements of any changes in rates and a detailed justification for any such changes.

(e) Invoices shall be reviewed for accuracy and appropriateness by a member of the department staff who has direct knowledge of the remediation action.

(f) Invoices shall be reasonably consistent with expectations regarding costs, benefits, and outcomes developed during the meet and confer process specified in subdivision (a) of Section 25269.5, if the department's knowledge of site conditions or other factors which may substantially impact the department's costs associated with the site, have not changed significantly since the last conference.

(g) A process for the timely review and settlement of any outstanding accounts shall be developed and implemented.

25269.8. The department shall take all of the following actions with regard to uncollectible accounts:

(a) Review all current outstanding receivables and make an appropriate adjustment for estimated uncollectible amounts, consistent with current accounting practices and recognizing the present value of future collection. The department may, if warranted, write off or write down those receivable amounts.

(b) Maintain and report an analysis of outstanding receivables and other control analyses.

(c) Consider whether to enter into a contract with a private collection agency to collect substantially past-due accounts and, for longer term receivables, consider whether credit arrangements should be made with banks or other institutions willing to assist in financing a potentially responsible party's obligation for remediation.

25269.9. On or before June 1, 1998, the department, in consultation with the Secretary for Environmental Protection, shall make available a written report regarding the implementation of the changes required by this article.

SEC. 4. Section 25330.4 is added to the Health and Safety Code, to read:



25330.4. (a) Notwithstanding any other provisions of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for those removal or remedial actions are hereby continuously appropriated to the department for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.

(c) Notwithstanding any other provision of law, money in the subaccount for those removal or remedial actions shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.

(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccounts established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to section 25330.5, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the Hazardous Waste Control Account.

SEC. 5. Section 25360 of the Health and Safety Code is amended to read:

25360. (a) Any costs incurred and payable from the state account, the Site Remediation Account, or the Hazardous Substance Cleanup Fund shall be recoverable



by the Attorney General, upon the request of the department, from the liable person or persons. The amount of any remedial or removal action costs that may be recovered pursuant to this section shall include interest on any amount paid from the Hazardous Substance Cleanup Fund calculated at a rate equal to the interest rate of the bonds sold pursuant to Article 7.5 (commencing with Section 25385) and interest on any amount paid from the state account or the Site Remediation Account, calculated at the rate of return earned on investment in the Surplus Money Investment Fund pursuant to Section 16475 of the Government Code.

(b) A person who is liable for costs incurred at a site, which are payable from the state account, the Site Remediation Account, or the Hazardous Substance Cleanup Fund, shall have the liability reduced by any fee pursuant to this chapter that was actually paid by that person in connection with that site, including any fee paid pursuant to Section 25343.

(c) The amount of cost determined pursuant to this section shall be recoverable at the discretion of the department, either in a separate action or by way of intervention as of right in an action for contribution or indemnity. Nothing in this section deprives a party of any defense he or she may have.

(d) Moneys recovered by the Attorney General pursuant to this section shall be deposited in the state account, except that, if the costs incurred were paid from the Hazardous Substance Cleanup Fund, the Attorney General shall deposit the amounts recovered into the Hazardous Substance Clearing Account. Moneys deposited in the Hazardous Substance Clearing Account pursuant to this section are available to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385).

SEC. 6. Section 25360.1 is added to the Health and Safety Code, to read:

25360.1. Any monetary obligation to the department pursuant to Chapter 6.5 (commencing with Section 25100) or this chapter shall be subject to interest from the

date of the demand at the same rate of return earned on investment in the Surplus Money Investment Fund pursuant to Section 16475 of the Government Code, except the department may waive the interest if the obligation is satisfied within 60 days from the date of invoice.



Approved \_\_\_\_\_, 1996

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*Governor*

